IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6706 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RP MISTRY

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6706 of 1999

MR AJ SHASTRI for Petitioner No. 1-7

MR L B DABHI AGP for Respondent No. 1

RULE SERVED for Respondent No. 1,2

NOTICE SERVED BY DS for Respondent No. 1-2

UNSERVED-REFUSED (R) for Respondent No. 3

MR DR BHATT for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 20/12/2004

ORAL JUDGEMENT

1. The petitioners herein have preferred this petition in order to quash and set aside the order dated 30/07/1999 passed by respondent no.1 herein as also the order dated 28/05/1999 passed by respondent no.2 herein and to direct the respondent authorities to permit the petitioners to run the Institution in accordance with

law.

2. The petitioners were serving as Primary Teachers in the School run by respondent no.3 Trust since about 17 years. As new trustees were admitted to the respondent Trust, some differences crept amongst them. Respondent no.2 herein, by order dated 28/05/1999, at Annexure-A to the petition, cancelled the recognition of the school. The petitioners preferred an Appeal as well as an injunction application before the respondent Government. But as the said Appeal and the injunction application were not heard urgently, the petitioners preferred an application being Special Civil Application No.4040 of 1999 before this Court.

3. This Court by order dated 05/07/1999 disposed of the said Special Civil Application by directing the respondent Government to decide the Appeal preferred by the petitioners latest by 31/07/1999. Respondent no.1 herein without assigning any reasons and without giving any opportunity to the petitioners disposed of the said Appeal. Hence, this petition.

4. Mr.A J Shastri learned advocate for the petitioners has contended that the respondent Government without dealing with the injunction application and without giving any opportunity of hearing to the petitioners disposed of the Appeal in question. He has contended that it is a settled position of law that when appeal or revision is filed, injunction has to be granted so that the appeal or revision may not become infructuous. But, the respondent Government without granting the injunction application straightway disposed of the Appeal preferred by the petitioners.

5. I have heard learned counsel for the parties and have gone through the documents placed on record. While passing the impugned order dated 30/07/1999, at Annexure-E to the petition, the respondent authority has not considered the grounds and the contentions raised by the petitioners. It appears that the reasons which had weighed with the authority was that the Management had not preferred any appeal against the order and that it had not made any representation to that effect also. From the order dated 28/05/1999, it clearly transpires that the Director of Primary Education, respondent no.2 herein, has not considered the contentions which are raised by the petitioners, more particularly, the contention of the petitioners with regard to the appointment of two teachers, at page 33 Annexure-C to the petition.

6. In above view of the matter, this Court is of the opinion that the appeal preferred by the petitioners is required to be reconsidered by the respondent State Government.

7. Hence, the petition is partly allowed. The order dated 30/07/1999 passed by respondent no.1 State Government, at Annexure-E to the petition, is quashed and set aside. Respondent no.1 is directed to reconsider the Appeal preferred by the petitioners and to decide it after giving reasonable opportunity of hearing to the petitioners and after considering the contentions raised by them in the appeal memo at Annexure-C to the petition. Now, since the Appeal is of the year 1999, the respondent Government is directed to decide it within a period of three months from the date of receipt of writ of this Court. With the above directions, the petition stands disposed of. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. Jhaveri, J.)

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